

OCA 86-1582
16 May 1986

MEMORANDUM FOR: C/CTC/DO
C/EPS/DO
NIO/CT
C/PCS/DO
Assistant General Counsel, DO

FROM: Deputy Director for Legislation
Office of Congressional Affairs

SUBJECT: S. J. Res. 340 - Establishment of
Congressional Consultative Group Under
the War Powers Act

1. Attached for your information please find a copy of pp. S5597 - 5600 from the Congressional Record of May 8, 1986. These pages contain the text of S. J. Res. 340 and the remarks by Minority Leader Byrd, its sponsor, and Senator Leahy, a co-sponsor and Ranking Minority Member of the Senate Select Committee on Intelligence (SSCI), upon its introduction.

2. S. J. Res. 340 is a proposal to amend the War Powers Act so as to establish a group of eighteen (18) Members of Congress to serve as the exclusive Congressional body with which the Executive Branch would consult under the War Powers Act. The group would consist of: the Speaker of the House and the President Pro Tempore of the Senate (2); the leaders of each chamber (4); and, the chairmen and ranking minority members from the foreign affairs, armed services and intelligence committees of each chamber (12).

3. As of this date, the bill has been co-sponsored by five Democratic senators: Cranston, Pell, Leahy, Inouye and Eagleton. In his remarks, Senator Leahy contrasts S. J. Res. 340 with S. 2335, the Dole/Denton anti-terrorism amendment of the War Powers Act (subject of previous memoranda from this office). He also notes, in passing, that S. 2335 could be read to repeal the restrictions of the Intelligence Oversight Act.

4. Both bills have been referred to the Foreign Relations Committee.

5. It appears that the issue may be shaping up along partisan lines, with Democratic senators lining up behind the S. J. Res. 340 and the Republicans behind S. 2335 (the eight sponsors to date are: Senators Dole, Denton, Mattingly, Hecht, Nickles, Thurmond, Wallop and Wilson).

6. We will keep you advised of developments in this area.

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Attachment
as stated

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THE ECONOMIC SUMMIT

Mr. BYRD. Mr. President, I have, of course, joined before in complimenting the results of the economic summit, and I do so again. I am glad there were stronger statements than we have heard before and there seemed to be unanimity among the seven industrialized democracies that state-supported terrorism has to be dealt with, and firmly, and that it takes the coordinated efforts and the cooperation not only of those seven nations but also of other nations to deal with it. I am heartened by this.

As to the carry through, I hope we will see that as well.

As to trade, I think some progress was made. Too many times I have heard the Prime Minister of Japan and other Japanese officials say that the Japanese Government, the business community, and the consumers of Japan are going to take action to open Japanese markets to American goods. We have heard good public relations speeches, but all too few follow-throughs. Now we have had a good speech by the Prime Minister again, and I have to compliment the Prime Minister, it takes courage to say what he has said and to attempt to take the actions he has outlined. But I would hope that this time we will not have been treated to fine speeches and ingratiating promises. I am hoping for the follow-throughs, and I am sure our fellow Americans are doing the same.

We have already seen much of the manufacturing base of this country transferred abroad, and millions of American jobs have been exported abroad because Japan has not opened its markets to fair competition by American products. I hope that we will see action this time and follow-through—not just good PR.

AMENDMENT OF THE WAR POWERS ACT

Mr. BYRD. Mr. President, on Monday, April 14, I was invited, with others of the leadership, to a meeting with the President at the White House. Leaders on both sides of the aisle from both Houses were present and there were top-ranking members of the Foreign Relations and Intelligence and Armed Services Committee. When we arrived, the President indicated that he had already ordered a bombing raid on targets in Libya. We were informed that already en route to their destinations were F-111s based in England, that they would reach their targets about 7 p.m. Washington, DC, time. As I recall, they had already been in flight 2 hours.

And so I asked the question, "Has any other Member of Congress been told about this action, or plans for it prior to this meeting that is going on now?" And the answer was, "No." I said, "Well, it is obvious then that we

have been called here today to be notified of the action, not consulted—to be told of a decision that has already been made." I said, "I am not complaining at this point." I said that military actions may have to be taken, from time to time that require secrecy, that require the element of surprise if such actions are to be successful in minimizing American losses and in maximizing the chances of the operation's success.

I think we have to be realistic in that regard. And I believe that an operation such as we were being told about was such an operation. It should be apparent to anyone that the element of surprise, the element of secrecy was an element of utmost importance in the military action that was taken against Libya.

Now, having said that—and I will not go into this further at this time—there were many indications that the administration itself had consulted others, had notified others countries, and that the leaders of the Congress were certainly not the first to be informed of what was going to happen.

Now, I will leave that here for now. The War Powers Act—and I read only one paragraph—section 3 says:

The President, in every possible instance, shall consult with Congress before introducing United States armed forces into hostilities or into situations where eminent involvement in hostilities is clearly indicated by the circumstances and, after every such introduction, shall consult regularly with the Congress until United States armed forces are no longer engaged in hostilities or have been removed from such situations.

Now, Mr. President, there have been those who have said we have to amend the War Powers Act to allow the President to have more flexibility in order to deal with state-supported terrorism. In this particular situation I am talking about, I made no argument then or subsequent thereto that the War Powers Act had been violated. The language says, "The President in every possible instance shall consult."

The word "possible" is the key word here. Obviously, that word was put there by Congress for some reason. The language does not say, "in every instance." It says, "in every possible instance." So I think the President had the flexibility in that word to act then under the circumstances, and to act effectively and forcibly against state-sponsored terrorism under such similar conditions if the national security interest requires again. In the case of Libya, I am not charging now and have not so charged at any time that the War Powers Act was violated in the consultation requirement.

Obviously the President cannot consult with 535 Members of the House and Senate. He cannot do that. And Congress ought to make this clear. Congress has said the President shall consult "in every possible instance." Congress ought to make it clear what it means in a situation such as we are talking about, in which obviously the

President cannot consult with 535 Members of Congress. We do not want the President to violate the act. We do not want the law to be such that it will be so inflexible that the national security interests of this country will be in danger and if we want to make it possible for a President to act in the national security interests of this country without violating the act—and I am sure we ought to—I think we ought to say just what we mean when we say "consult with Congress."

On April 18, 1986, I sent the President a letter—with the signatures of Senator PHIL, Senator LEAHY, and Senator NUNN—in which we proposed the creation of a small, permanent consultative body to which the President can look in situations similar to that with which we were confronted with Libya.

What was proposed is simply this: That that consultative body in such situations be composed of the Speaker of the House, the President pro tempore of the Senate, the majority leaders and the minority leaders in both Houses, the chairman and the ranking members of the Intelligence Committees, the Armed Services Committee, and the Foreign Relations or the Foreign Affairs Committees in both Houses. That would be a small group of 18 Members of both Houses.

These Members, by virtue of their positions, as I have set forth, will have had long experience in the Congress. Certainly, they will have, on many occasions, had access to military and intelligence secrets, and they will have attained high seniority. That is evident from their identities as set forth in the letter.

As I said at the White House, there are some people on Capitol Hill who are as capable of keeping a secret as anyone in the White House or in the State Department or in the Department of Defense or anywhere else. I have been here long enough to know that. I believe it.

I think we owe it to the President—this President, any President—to set forth the clear identity in such a situation as the Libyan situation of what we mean by consulting Congress, and the letter proposes such a consultative group.

Mr. President, I ask unanimous consent to have printed in the Record the letter to which I have referred.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. SENATE
Washington, DC

THE PRESIDENT

The White House, Washington, DC

DEAR MR. PRESIDENT: We are hopeful that the purposes of the military action you ordered for Monday, April 14, 1986, in regard to Libyan military and terrorist support facilities have been accomplished. Specifically, we join you in the hope that a powerful incentive has been provided to Colonel Elmaghrabi, as well as to other terrorist elements, against the use of their tools of violence against the civilized world. Secondly, it

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would be a very positive step if our allies could now take a second look at the question of sanctions against the Libyan government and join with us in a tightly coordinated policy whereby economic actions provide additional incentive to the Libyan government to renounce the use of terrorism.

In discussions with a number of our colleagues, the question of the flow of information between the Executive branch and the Congress has been repeatedly raised. We are very cognizant of the tight requirements of secrecy needed in order to ensure that operations of this type have the maximum opportunity for success, and in order to safeguard the lives of the courageous men and women who put themselves in harm's way to accomplish the goals of national policy.

Taking all this into account, we would like to call your attention to the following factors: first, advance information as to the intentions of your Administration was the subject of continuous press attention for over a week prior to the military action, leading to reports of advance defensive action taken by Khaddafi which could have endangered American lives. Much of this was the result of substantial public commentary by Administration officials. Second, your special emissary, Ambassador Walters, apparently briefed our allies prior to the provision of information to responsible members of Congress. Third, the first indication of your decision was at a meeting Monday afternoon at the White House, after the operation was already underway, and this amounted to a notification of your actions rather than the consultation required by law—Section 3 of the War Powers Act provides that the President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities.

We believe a strongly bipartisan foundation is the only guarantor of success in our nation's foreign affairs. It is in the spirit of further developing this foundation that we would suggest that together we refine the section on consultation in the Act. Specifically, we would suggest that a consultative body, composed of the Speaker of the House, the President Pro Tempore of the Senate, the Majority and Minority Leaders of both Chambers and the Chairmen and Ranking Minority members of the Armed Services, Foreign Relations, and Intelligence Committees in both Chambers be designated. These 18 members, then, would have the responsibility of fulfilling the consultative duties required by the Act before introducing United States Armed Forces into hostilities or situations of imminent hostilities and would be the body to which you could look with more predictability for the purpose of fulfilling the obligations of your office under the Act.

We hope that you take these views into consideration, and that we can discuss making more satisfactory arrangements than have sometimes been the case in the past.

Sincerely,

CLAIBORNE PELL
ROBERT C. BYRD
SAN NUNN
PATRICK LEAHY

Mr. BYRD, Mr. President, at this point I offer this joint resolution for the consideration of the committee which would legislatively formalize such a consultative group. I ask unanimous consent that the text of the joint resolution be printed in the RECORD. It, too, is joined in by Senator CRANSTON, Senator PELL, Senator LEAHY, Senator INOUE, and Senator EAGLETON.

I hope that Senators on both sides of the aisle will cosponsor the joint resolution.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES 340

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled: That section 3 of the Public Law 93-148, also known as the War Powers Resolution, is amended—

(1) by inserting "and" after "Sec. 3," and
(2) by adding at the end thereof the following:

"(b) For purposes of consultation as required in subsection (a), there is established within the Congress a permanent consultative body composed of—

"(A) the Speaker of the House of Representatives and the President pro tempore of the Senate;

"(B) the Majority Leader and the Minority Leader of the House of Representatives and the Majority Leader and the Minority Leader of the Senate;

"(C) the chairman and ranking minority member of each of the following committees of the House of Representatives:

"(i) the Committee on Foreign Affairs;
"(ii) the Committee on Armed Services; and

"(iii) the Permanent Select Committee on Intelligence; and

"(D) the chairman and ranking minority member of each of the following committees of the Senate:

"(i) the Committee on Foreign Relations;
"(ii) the Committee on Armed Services; and

"(iii) the Select Committee on Intelligence."

COUNTER-TERRORISM AND THE WAR POWERS
RESOLUTION

Mr. LEAHY. Mr. President, recent weeks have seen U.S. military forces engaged in Libya in response to acts of terrorism committed against Americans around the world.

In the days prior to the raid, the probability that U.S. military action was imminent was evident to everyone. Certain Members of Congress and congressional committees also had advance knowledge of the intelligence underlying the President's decision to initiate the U.S. military operation and perhaps some of the planning for it. But, in my view, insufficient time and attention was paid by the administration to keeping Congress informed and obtaining congressional viewpoints on this grave issue.

The Congress has the authority, under article I, section 8 of the Constitution, "To declare War, grant letters of Marque and Reprisal, and make rules concerning Captures on Land and Water." This is balanced by the power of the President under article II, section 2, to conclude treaties with the advice and consent of the Senate, conduct foreign policy, and serve as Commander in Chief of the Armed Forces.

In the course of our history, the President has acquired ever greater powers to conduct the foreign policy of the United States, including the deployment of U.S. military forces in crises abroad. Presidents have increas-

ingly committed the United States to conflicts overseas without consulting fully with Congress and without obtaining a declaration of war or similar resolution of congressional support. When a resolution of support was obtained in the Gulf of Tonkin Resolution, the executive branch used it as a basis for even broader authority to wage an undeclared war for several years.

Mr. President, my predecessor in this seat in the U.S. Senate, the greatly respected former Senator from Vermont, George Aiken, emphasized the dangers inherent in granting such blanket approval to the executive branch to engage in hostilities overseas. In a speech on the floor on January 31, 1966, he said:

I never for an instant regarded my vote for the concurrent resolution of August 1964 as a vote to give the President authority to wage war at will in Southeast Asia."

The Vietnam war was the breaking point for the erosion of congressional responsibility over warmaking. Extensive U.S. involvement in Vietnam finally led to a legislative reaction by Congress. In 1973, Congress passed the War Powers Resolution. It requires the President to consult with Congress prior to the introduction of U.S. military forces into situations of hostilities or in which the likelihood of hostilities is clearly indicated by the circumstances. Explicit notification and reporting requirements were also enacted.

The executive branch has always regarded the War Powers Resolution as an intrusion into the President's power to conduct foreign policy. Presidents have complied only reluctantly and minimally with the War Powers Resolution. To a considerable degree, this poor record has actually occurred in connection with military operations conducted in response to international terrorism.

When President Carter ordered United States forces into Iran to attempt a rescue of the hostages being held at the United States Embassy in Tehran, his legal advisers provided an opinion that essentially said the war powers provisions were not applicable. Their argument was that because, as of the time of the termination of the mission at "Desert One," the rescue forces had supposedly not reached a position in which hostilities were imminent—despite the fact that they were hundreds of miles inside Iranian territory.

When President Reagan directed United States naval forces to undertake operations inside waters claimed by Libya in the Gulf of Sidra—below Qadhafi's "Line of Death"—the President did notify Congress but pointedly avoided any reference to the provisions of the War Powers Resolution. The President appears to have taken the position that since the U.S. forces were in international waters, no consultation was necessary despite the

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fact that the situation certainly appeared to indicate that hostilities were probable.

The other major statute under which executive branch plans for counterterrorism operations are reported to Congress is the Intelligence Oversight Act of 1980. Title V of the National Security Act. Under this act the Congress must be kept "fully and currently informed" through the intelligence oversight committees of all intelligence activities. The committees must in particular be informed of significant anticipated intelligence activities, including ones which require a Presidential finding—that is covert actions. Such counterterrorist activities could under certain circumstances involve elements of U.S. military forces.

Full reporting to Congress under the Intelligence Oversight Act is essential if the intelligence on international terrorism, especially state support to terrorism, is to be understood by Congress. When the administration begins, on the basis of such information, to plan for an active response through some form of military or other counterterrorist operations, it is also necessary that the intelligence oversight committees be informed of any related special intelligence operations.

The Intelligence Oversight Act provides Congress the ability to review the intelligence information upon which decisions to deploy military force is made. The events of recent days with respect to the U.S. air operation against Libya illustrate the crucial role of intelligence information as the basis for the decision to commit U.S. military forces abroad. The Oversight Act also provides a basis for notification of the deployment of U.S. intelligence units in connection with such actions.

Finally, with respect both to intelligence information and intelligence operations the Intelligence Oversight Act allows the executive branch to seek the support and endorsement of Congress for related intelligence activities. If the President had asked the oversight committees for their view of the adequacy of the intelligence on which proposed military action is based, additional protection could have been provided for sensitive intelligence collection sources and methods. Committee confirmation of the intelligence basis for the action could have obviated the necessity for the President or his advisers to describe such information publicly. The intelligence information disclosed recently concerning Libyan involvement in terrorism while essential to obtaining support at home and abroad for the military action against Libya, undoubtedly jeopardized highly sensitive U.S. intelligence methods.

Mr. President, the consultative framework established by the War Powers Resolution and the Intelligence Oversight Act affords Congress the opportunity to exercise its role

under the Constitution to oversee the decision to deploy U.S. forces into hostilities overseas.

Mr. President, I have joined with the distinguished minority leader and the ranking Democratic member of the Armed Services and Foreign Relations Committees as an original sponsor of a resolution to amend the War Powers Act by establishing a permanent body in Congress for the consultation required under the act. The creation of such a special group would provide a forum for the President to consult with Congress under the provisions of the act in exceptional circumstances such as those which prevailed just prior to the air strike against terrorist facilities in Libya. It would also ensure that consultations with Congress in connection with the exercise of war powers occurs on a fully bipartisan basis.

The recent Libya raid shows the importance of obtaining the views and advice of Congress in advance of the commitment of U.S. forces overseas. Deciding on this course of action and planning the mission involved the most delicate considerations of policy and public acceptability. The administration would greatly benefit in situations such as this by having the views of key Members of Congress. There should be a firm consensus between the President and Congress on the necessity for and appropriateness of a planned military action against terrorism.

The resolution we have introduced identifies the following Members of Congress as constituting the consultative body for war powers. The Speaker of the House and President pro tem of the Senate, the majority and minority leaders of both Houses and the chairmen and ranking minority members of the Foreign Relations, Armed Services and Intelligence Committees of both Houses. It might be argued that this body would be cumbersome and could potentially jeopardize the security of planned operations. My response would be that the members of the consultative body could be asked to take extraordinary security precautions and make other arrangements to facilitate expeditious and secure consultation. The body would be composed of Members of Congress accustomed to dealing with sensitive classified matters in confidence. Also, the resolution would not define at exactly what stage in planning or in what detail consultation should occur. It simply creates a permanent body for consultation.

Mr. President, I would also like to comment on a related bill introduced recently by Senators Dole and Dorton of consultation with Congress in planning counterterrorism operations. In contrast to our bill, the Dole-Dorton bill is apparently designed to give the President total power to order any counterterrorist operation, regardless of any provision of law that might otherwise restrict

such action, either substantively or procedurally. This specifically includes the War Powers Resolution and by the implied reach of the Dole-Dorton bill, the Intelligence Oversight Act as well.

By its terms, the Dole-Dorton bill would remove all limits on Presidential authority to use American military force for counterterrorism purposes. It would simply separate this whole sensitive and controversial area of activity from the constitutional allocation of powers in connection with warring. It seeks to have Congress abdicate its consultative role in this crucial area. Apparently, it would eliminate even the requirement to notify Congress of counterterrorist activities under the War Powers Act and the Intelligence Oversight Act.

The Dole-Dorton bill would create a strong presumption in favor of military response to terrorism. It does so by specifying that organizing or supporting terrorist acts against U.S. persons constitutes aggression against the Nation which justifies the use of deadly force. The purposes section makes clear that the bill is to be read broadly so as to grant virtually complete authority to the President to act with full discretion in using American military force in response to terrorism.

The late Senator George Allen, whose views on Vietnam were well known and respected to many Americans, reflected on the importance of regular consultation with Congress on war powers and the importance of not making unlimited delegations of authority to the executive branch in this area. In a speech on the floor on November 24, 1970, he said:

The only safe way to grant the necessary priority in foreign policy is to restore bipartisanship, not on a political party basis alone but between the branches of Government before decisions are made.

That in turn means restoring the habit of consultation between the White House and the Congress for only consultation gives substance to the idea of bipartisanship.

For a while there was consultation after the Tonkin Gulf Resolution was passed. But consultation [soon] ended.

The aim of preventing defeat... was replaced by the aim of military victory—and the great escalation started without consultation with the Senate.

Consultation between the White House and the Senate is not so much a matter of law, though the Senate's role in foreign policy is rooted in our Constitution.

More importantly, consultation ought to be a matter of policy. It is the element without which [administration policy] cannot become what I hope it will become—the ground of a new, strong, bipartisan foreign policy.

Mr. President, Congress lost the ability to participate in fundamental decisions to become militarily engaged in Vietnam by passing the Gulf of Tonkin Resolution. What the majority leader and the other sponsors are proposing is that we now enact a "Gulf of

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"Terrorism" Resolution that would take Congress completely out of the act when decisions are made to commit U.S. forces overseas to combat international terrorism.

By incorporating the notion of "deadly force" from the law enforcement arena, furthermore, the Dole-Denton bill appears to be encouraging the assassination or execution of foreign leaders or other persons abroad who conspire in terrorism against Americans. This would be an extremely unfortunate precedent, and contrary to the moral norms of this country. This, alone, would make the Dole-Denton bill unacceptable.

The bill would also suspend the relevant provisions of the War Powers, Intelligence Oversight and other acts for an undetermined period of time—for as long as there are terrorists and they pose a threat to U.S. persons. The Congress cannot again afford to grant such indefinite authority to the President over the power to make war.

Mr. President, the events of recent days show that the country needs more, not less, cooperation between the branches of Government in designing effective responses to international terrorism. As the elected representatives of the American people, the Congress must continue to play an important role in formulating policy to combat terrorism. We cannot forfeit our responsibilities in participating, through consultations, in so fundamental an issue as the commitment of American military forces in combat abroad.

The views and advice of Congress cannot be overlooked in seeking wise ways to deter and punish international terrorists. Only by full notification and consultation with Congress can the necessary basis be created for broad public support for difficult actions against foreign terrorists.

SENATOR HAWKINS' SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair recognizes the Senator from Florida (Mrs. Hawkins).

Mr. PRESSLER. Mr. President, on behalf of the distinguished Senator from Florida (Mrs. Hawkins), I shall make her statement under her special order this morning.

DRUG TESTING IN THE NUCLEAR INDUSTRY

Mrs. Hawkins. Mr. President, in the aftermath of the nuclear disaster at Chernobyl, we have cause to ponder the safeguards we have adopted in our own nuclear industry. The social, economic and biological consequences of error in this industry are clearly stupendous. Our society and all of its institutions have an enormous stake in the safe operation of our nuclear industry.

It is therefore with some dismay that I have learned of our Nuclear Regulatory Commission's (NRC) continued deferral of prescriptive rulemaking for our nuclear power industry in the area of drug abuse problems at nuclear power plants. While the Federal Railroad Administration requires drug testing for certain railroad employees,

and even Washington D.C.'s METRO Authority requires drug testing in certain instances for its employees, the NRC has not defined a national policy on drug testing in the nuclear workplace. What drug testing does occur in the nuclear industry is left to the discretion of each company in the nuclear industry. I have today written a letter to the NRC urging their prompt action in issuing appropriate drug testing regulations to our nuclear power industry.

While the NRC acknowledges that there is a drug problem in our nuclear power plants, it has left to the companies themselves direct responsibility to deal with the problem. I do not like to see unnecessary government regulation of private industry, but drug testing for critical employees of our nuclear industry is certainly one area where the government's presence would be well advised.

Some private nuclear power companies are doing an excellent job in the area of drug testing. However, they could clearly use a helping hand from the Nuclear Regulatory Commission. Georgia Power's Alvin W. Vogtle nuclear power project is an excellent case in point.

Much to the credit of Georgia Power, this company declared war on drugs three years ago, and meant it. This came after troubling statistics on job-related accidents involving aberrant employee behavior at the Vogtle nuclear power plant construction site. A urinalysis program to screen employees and potential employees was set up, along with a telephone hotline to receive confidential information about drug use of any employees at the nuclear power project site.

The results of Georgia Power's drug testing program have been remarkably successful. The accident rate at the plant has dropped steadily since drug testing was instituted, from 5.4 accidents for every 200,000 man hours in 1981 before testing began, to 49 accidents per 200,000 man hours in 1985.

Despite Georgia Power's exemplary care in assuring accuracy of test results, requiring not one but two confirmatory tests for each positive result, the American Civil Liberties Union has rushed in to join the opposition to Georgia Power's actions of barring from the work site some of the 200 employees who tested positive for illegal drug use.

The ACLU has been routinely subjecting companies who conduct drug testing of employees to expensive and frustrating legal challenges. These ACLU legal challenges clearly have a chilling effect on private companies' decisions to order drug testing, even where vitally necessary, such as the nuclear power industry. If Georgia Power and other private nuclear companies could cite policy guidance or rules on drug testing from the Nuclear Regulatory Commission clearly the hand of Georgia Power would be strengthened in dealing with the unwarranted legal challenges of the disgruntled employees who test positive, their union leadership which reflexively comes to their defense, and narrow interest advocacy groups like the ACLU. An NRC rule would serve to centralize the litigation.

Those parts of our nuclear industry which are trying to do the right thing and adopt drug testing for nuclear employees need the help and support of the NRC in this vital area. There are also some parts of our nuclear industry which are not doing drug testing of employees. According to testimony on May 7 before the House Select Committee on Narcotics, over 90 percent of our nuclear power companies do drug test employees which show problem cause for suspicion of drug use. What about those nuclear power companies who do not drug test? Clearly here is a disaster waiting to happen.

In my own state of Florida, we learned recently that 5 security guards at Florida Power's Crystal River nuclear power plant left their jobs last month following the institution of a drug testing program by their company. According to newspaper accounts, one of the guards said that about a third of the security guards used marijuana at the nuclear plant site while on duty. One guard allegedly sold marijuana and cocaine at the nuclear plant itself.

I sincerely hope that the NRC reassesses its position on deferral of rulemaking on drug testing, especially in the light of these recent revelations of drug use at our nuclear power plants coming on the heels of the Chernobyl disaster. This juxtaposition should prompt quick action on the part of the NRC to safeguard our society's, indeed the world's, vital interests in assuring employee fitness at our nuclear power plants. If not, then the Congress will have to step into this vacuum.

Mr. PRESSLER. Mr. President, that concludes the special order by Senator Hawkins, of Florida, which I have read in her absence.

EXECUTIVE SESSION

Mr. PRESSLER. Mr. President on behalf of the majority leader, Senator Dole, I inquire of the minority leader if he is in a position to confirm any of the following nominations on today's Executive Calendar: No. 735, Donald M. Newman; No. 769, Roger M. Olsen; No. 770, Herman W. Rodriguez; No. 771, Evan G. Galbraith; No. 772, William L. Roper; No. 773, J. Michael Hudson.

Mr. BYRD. Mr. President, the nominees just identified have been cleared on this side of the aisle, and we are ready to proceed.

I say to the distinguished Senator that I will ask the able minority whip, Mr. CRANSTON, to take my place at the moment and to conduct business with his staff and mine.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations just identified.

There being no objection, the Senate proceeded to the consideration of executive business.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the nominations identified be considered and confirmed en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Donald M. Newman of Indiana, to be Under Secretary of Health and Human Services.

DEPARTMENT OF JUSTICE

Roger Milton Olsen, of Virginia, to be an Assistant Attorney General.

Herman Wirshing Rodriguez, of Puerto Rico, to be United States Marshal of the District of Puerto Rico for the term of four years.